

A Subject

ROUTING AND TRANSMITTAL SLIP

Date

11 APRIL 1989

TO: (Name, office symbol, room number,
building, Agency/Post)

Initials

Date

1. DIRECTOR OF INFORMATION TECHNOLOGY

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Action	File	Note and Return
Approval	For Clearance	Per Conversation
As Requested	For Correction	Prepare Reply
Circulate	For Your Information	See Me
Comment	Investigate	Signature
Coordination	Justify	

REMARKS

FYI

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DO NOT use this form as a RECORD of approvals, concurrences, disposals,
clearances, and similar actions

Agency/Post)

Room No.—Bldg.

Phone No.

EXA/DDA

EXECUTIVE SECRETARIAT

ROUTING SLIP

TO:

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4	D/ICS				
5	DDI				
6	DDA	X			
7	DDO				
8	DDS&T				
9	Chm/NIC				
10	GC		X		
11	IG				
12	Compt		X		
13	D/OCA				
14	D/PAO				
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16	D/Ex Staff				
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SUSPENSE

Date

Remarks

ER 89-1395

Executive Secretary

10 Apr 89

Date

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ER 89-1395



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

THE DIRECTOR

April 3, 1989

M-89-15



MEMORANDUM FOR THE HEADS OF DEPARTMENTS AND AGENCIES

FROM: Richard G. Darman
Director

SUBJECT: Presidential Review of Agency Rulemaking

This is to call your attention to the requirements of Executive Order Nos. 12291 and 12498, and of the Paperwork Reduction Act of 1980. In the Executive Orders, the President delegated to the Office of Management and Budget (OMB) the responsibility for Executive Office of the President review of agency rulemaking (including not only formal regulations but other directives that are not solely for intra-agency administration). Similarly, the Paperwork Act requires the review of agency information collections and delegates the responsibility to OMB. The attached paper summarizes the review processes that implement these requirements.

It is the goal of OMB to carry out these procedures as expeditiously and cooperatively as possible. Experience has shown that the process of review is aided, both for the agency and for OMB, if a senior representative of your office -- often the Deputy or Under Secretary -- is designated as the responsible policy official for these activities. Within OMB, the office responsible for both regulatory and paperwork reviews is the Office of Information and Regulatory Affairs (OIRA). Upon designation of your office's representative, the Administrator of OIRA will be glad to meet to discuss the process and the review status of pending rules and related issues.

Attachment

March 1989

IMPLEMENTATION OF EXECUTIVE ORDER NOS. 12291 AND 12498 AND THE PAPERWORK REDUCTION ACT.

I. Executive Order No. 12498.

E.O. No. 12498 requires the Administration annually to publish a Regulatory Program of the United States Government outlining the Administration's regulatory priorities and upcoming important regulatory actions. The Order also creates the annual regulatory planning process that results in the publication of this book.

In a process similar to the fiscal budget process, at the beginning of each year each major regulatory agency drafts its regulatory program -- a summary of its regulatory policies, and a list of specific regulatory development projects underway. These draft regulatory programs are reviewed by OMB for consistency with the Administration's regulatory principles and priorities, and the planned actions of other regulatory agencies. If a planned regulatory action is consistent with these principles and priorities, then the action is included in the published Regulatory Program.

The next Regulatory Program, covering the regulatory activities of 26 agencies for the period April 1, 1989 through March 31, 1990, will provide the Congress and the public with descriptions and timetables for these significant regulatory actions. The rulemaking actions could be preliminary, in the sense of studies or other activities intended to lead to a decision of whether to undertake a rulemaking, as well as those underway as proposed or final rules. The 1989 Regulatory Program also provides agency heads an opportunity to focus on the upcoming work of their agencies, determine agency goals and regulatory priorities, and determine whether a particular regulatory action is worth starting before committing agency resources to it. Under the Executive Order, if an agency later requests OMB review of an important draft proposed or final rule that was not included in the 1989 Regulatory Program, but that should have been, OMB may return it to the agency for further work and for inclusion in the next year's Regulatory Program.

Note: Agencies were to submit their draft 1989 regulatory programs for OMB review by January 9, 1989. Most agencies have already submitted them. New agency heads and policy officials should review these submissions, and revise them as may be necessary to reflect their regulatory strategies for the upcoming year; at the request of a newly-appointed agency head, OMB will defer final review to provide reasonable opportunity for agency reassessment.

II. Executive Order No. 12291.

E.O. No. 12291 establishes Presidential oversight of agency rulemaking, requiring review of regulatory actions before they are proposed for public comment, and again before they are issued in final form. The Order defines "regulation" or "rule" broadly to include all agency policy guidance that affects the public, including procurement practice, grant or loan procedures, guidance to the public, interpretations of rules and statutes, and regulatory actions that relate to international trade.

Following transmittal to OMB by the head of the agency of a draft proposed rule, generally called a notice of proposed rulemaking, OMB reviews this draft proposed rule for consistency with the regulatory principles stated in the Order. The review includes assessing whether the rule is based on adequate information concerning the need for and consequences of the proposed government action; whether the potential benefits to society of the regulation outweigh its costs; whether the regulatory objectives are chosen to maximize the net benefits to society; and whether the regulatory alternative chosen involves the least net cost to society. Additional guidance for review was promulgated by the Presidential Task Force on Regulatory Relief in August 1983.

An important part of OMB review of the draft rule includes evaluation for possible impact on the programs of other agencies. OMB arranges for review by affected agencies, and for the coordination of agency positions as necessary.

If the rule is a "major" rule as defined by the Executive Order (i.e., a rule likely to result in an impact of \$100 million or more annually, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity or a particular industry, or as otherwise designated by OMB), the agency must prepare a written analysis called a Regulatory Impact Analysis (RIA). The RIA must contain an analysis of the rule's full social impact, including its costs and benefits. This is submitted to OMB along with the applicable draft rule. The preparation of this Regulatory Impact Analysis is important to assist the agency head in evaluating the need for and consequences of possible Federal action and in selecting from alternate ways to structure the rule, and to provide OMB and the public with a broader understanding of the scope of the issues that may be involved. OMB published detailed draft Regulatory Impact Analysis guidance in the 1988 Regulatory Program.

In the course of its review of the proposed rule (and the accompanying RIA, where applicable), OMB works closely with the agency. When OMB has completed its review of a proposed rule,

OMB notifies the agency that it has concluded review. After receiving notification from OMB that it has concluded review, the agency may proceed to issue the proposed rule.

Following publication of the proposed rule, the agency receives and reviews the public comments. After it drafts the rule in its final form, the draft final rule is submitted to OMB for review in much the same fashion as the draft proposed rule, and a similar review process is conducted. In the case of regulations subject to statutory or judicial deadlines, OMB will not unilaterally delay publication beyond the deadline. In such cases it is incumbent upon the agency to submit the rule to OMB in a timely fashion, so as to provide a meaningful opportunity for Executive Office review. When necessary due to delays in agency clearance procedures, the draft rule should be submitted to OMB for preliminary review at the same time as it is being reviewed by the agency's senior policymakers.

III. Paperwork Reduction Act.

The Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that OMB approve all collections of information by an agency before they can be implemented. A collection of information includes (1) requests for information, written or oral, for transmission to the government, and (2) requests that one party disclose information to another. Many information collections and recordkeeping requirements are contained or authorized by regulations as monitoring or enforcement tools, while others appear in written questionnaires and their accompanying instructions. The Act's underlying goal is to minimize the Federal paperwork burden on the public. At the same time, the Act recognizes the importance of information to the successful completion of agency missions, and charges OMB with the responsibility of weighing the burdens of the collection on the public against the needs of the agency.

Agencies must justify, in writing, to OMB and to the public each proposed collection of information, and include estimates of the reporting burden on respondents. In submitting a clearance request to OMB, an agency must demonstrate that the collection of information is the least burdensome way of obtaining information necessary for the proper performance of its functions, that the collection is not duplicative of others, and that the collection has practical utility.

To alert the public, agencies must publish a notice in the Federal Register of the agency's submission to OMB of a request for approval and, in certain circumstances, publish the draft information collection itself. The public -- during OMB's review and at any other time -- is to have full opportunity to make its views known concerning any Federal data collection, both as to its perceived need and the reporting burdens involved.

Under the Act, OMB approval for an agency to use each data collection instrument can last a maximum of three years. Failure to obtain OMB approval means that the requirement for the public to provide the data collection is without legal force, and that an agency may not subject the respondent to any penalty for failure to comply with the request for information.